IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Hardayal Vs. State of Rajasthan & Ors.

S.B.CR. MISC. PETITION NO.962/2006

DATE OF ORDER :: November 01, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

None present, for the petitioner.
Mr.Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

Despite repeated calls, no one appears for the petitioner.

Heard learned Public Prosecutor for the State.

This criminal misc. petition under section 482 Cr.P.C. is directed against the order dt. 22.5.2006 passed by Additional Sessions Judge, Nohar (for short `the revisional court' hereinafter) in Cr. Case No.36/2004, whereby the revision petition filed by non-petitioners No.2 to 4 was allowed and the order dt. 25.6.2004 passed by Sub-Divisional Magistrate, Nohar (for short `the Executive Magistrate' hereinafter) was set aside.

The Executive Magistrate vide order dt. 25.6.2004 held

that the party No.1 caused nuisance by encroaching the public land. That order came to be challenged by non-petitioners No.2 to 4, who were party No.1 before the Executive Magistrate, by way of revision petition before the revisional court.

The revisional court noticed that the Executive Magistrate erred in not considering the measurement of the land shown in the patta. The Executive Magistrate assessed the measurement of the land in feet, whereas on the perusal of the pattas, the measurement has been mentioned in yards (Dar Gaj), meaning of 19 Dar Ga is 2x2 ft. and thus, the Executive Magistrate committed error in not appreciating the evidence placed on record before it. It has also been established from the evidence available on record that Gram Panchayat, Birkali granted permission for construction in favour of respondent No.2 Mahaveer Singh. It has also been held that the land of the petitioner is agricultural land, whereas the land belongs to non-petitioners No.2 to 4 is urban land and for this a patta has been issued in 1958 and the validity of patta issued in favour of respondents No.2 to 4 has not been challenged so far. Thus, the respondents No.2 to 4 cannot be said to be the trespasser, on the contrary, they are in possession of land owned and possessed by them under a valid patta issued in 1958. On this premise, in my view, the revisional court was justified in allowing

the revision petition and the conclusion arrived at by it is based on proper and sound appreciation of the evidence on record warranting no interference in inherent jurisdiction.

Consequently, the criminal misc. petition has no merit and the same is, therefore, dismissed.

[H.R.PANWAR],J.

m.asif/-